

JAN 23 1980 -4 00 PM

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January 23, 1980

RECORDATION NO. 11087-B Filed 1425

JAN 23 1980 -4 00 PM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission,  
12th and Constitution Avenue,  
Washington, D. C. 20423.

No. 0-023A0038  
JAN 23 1980  
Date  
Fee \$ 20.00

ICC Washington, D. C.

Dear Sirs:

Pursuant to the provisions of Section 11303 of the Interstate Commerce Act, as revised and recodified by Public Law 95-473, and the regulations of the Interstate Commerce Commission promulgated thereunder, we are transmitting for filing and recording originals or executed counterparts of (i) an Agreement and Assignment of Conditional Sale Agreement dated as of January 18, 1980 (the "Assignment") by and among National Railway Utilization Corporation ("NRUC"), as builder and assignor, The First National Bank of Maryland ("FNB"), as assignee, and Pickens Railroad Company ("Pickens"), as vendee, and (ii) a Certificate of Payment dated as of January 23, 1980 (the "Certificate") by and between NRUC and FNB evidencing the first advance under the Assignment.

The above-referenced documents have not heretofore been recorded with the Interstate Commerce Commission. However, the Assignment assigns the interest of NRUC in and to a Conditional Sale Agreement dated as of November 1, 1979 (the "Agreement") by and between NRUC, as builder and vendor, and Pickens, as vendee, which was filed with the Interstate Commerce Commission on November 26, 1979 and assigned Recordation No. 11087. The Assignment and the Certificate should be filed as a subpart of the Agreement and assigned Recordation Nos. 11087-A and 11087-B, respectively. In addition, as NRUC also is acting as a guarantor of the obligations of Pickens under the Agreement, the Assignment, the Certificate and the Agreement should be

*Handwritten signatures and initials:*  
- Large signature on the left margin.  
- Initials "C" and "D" at the bottom left.

Interstate Commerce Commission,  
January 23, 1980,  
Page Two.

cross referenced to NRUC.

A general description of the equipment covered by the Assignment and the related Conditional Sale Agreement is contained in Exhibit A attached to this letter.

The names and addresses of the parties to the transactions are listed below:

National Railway Utilization Corporation  
1100 Centre Square East  
1500 Market Place  
Philadelphia, Pennsylvania 19102

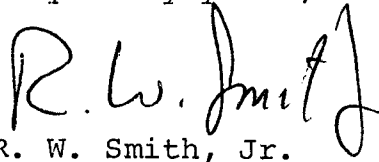
Pickens Railroad Company  
402 Cedar Rock Street  
Pickens, South Carolina 29671

The First National Bank of Maryland  
25 South Charles Street  
Baltimore, Maryland 21201

Please accept for recordation two counterparts of each document, stamp the remaining counterparts with the appropriate recordation number and return them with your fee receipt and letter confirming receipt to my delivering messenger.

The necessary filing and recordation fees for these documents are submitted herewith.

Very truly yours,

  
R. W. Smith, Jr.

RWSJr/fja  
Enclosures

EXHIBIT A  
To  
Conditional Sale Agreement

<u>Type</u>	<u>Builder's Specifications</u>	<u>Quantity</u>	<u>Road Numbers (both inclusive)</u>	<u>Price Per Unit</u>	<u>Total Base Price</u>	<u>Original Conditional Sale Indebtedness</u>	<u>Estimated Time and Place of Delivery</u>
70-ton, 50' 6" Class XM boxcars	Steel, single sheath, outside stake box car, with rigid underframe	45	NSL 157015- 157059	\$42,900	\$1,930,500	\$1,544,400	November , 1979 at Greenville, So. Carolina

**Interstate Commerce Commission**  
Washington, D.C. 20423

1/23/80

OFFICE OF THE SECRETARY

R.W.Smith, Jr.  
Piper & Marbury  
1100 Charles Center South  
36 South Charles Street  
Baltimore, Maryland 21201

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/23/80 at 4:00pm, and assigned re-recording number(s). 11087-A & 11087-B

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. 11087-A  
Filed 1425

AGREEMENT AND ASSIGNMENT JAN 23 1980 - 4 00 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT (the "Assignment") dated

as of January 18, 1980 by and between NATIONAL RAILWAY  
UTILIZATION CORPORATION (the "Builder"), PICKENS RAILROAD  
COMPANY (the "Vendee") and THE FIRST NATIONAL BANK OF  
MARYLAND (the "Assignee").

WHEREAS, the Builder and its wholly-owned sub-  
sidiary, the Vendee, have entered into a Conditional Sale  
Agreement dated as of November 1, 1979 (the "Conditional Sale  
Agreement") covering the construction, sale and delivery by  
the Builder on the conditions therein set forth, and the pur-  
chase by the Vendee, of the forty-five (45) Class XM boxcars  
described in Exhibit A to the Conditional Sale Agreement  
(the "Equipment"); and

WHEREAS, the Conditional Sale Agreement was recorded  
with the Interstate Commerce Commission on November 26, 1979  
and assigned recordation No. 11087; and

WHEREAS, the Assignee desires to provide interim  
financing to the Builder and the Vendee through the acquisition  
from the Builder of the right, security title and interest of  
the Builder in, to and under the Conditional Sale Agreement;  
and

WHEREAS, the Assignee's agreement to provide such  
financing and acquire an interest in the Conditional Sale  
Agreement is subject to certain terms and conditions, includ-  
ing the amendment of the Conditional Sale Agreement in the  
manner hereinafter provided;

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Builder in and to each unit of the Equipment, and the security interest of the Builder in the contract rights, accounts, rentals, fees, charges, income and proceeds arising from or in connection with the use of each unit of the Equipment;

(b) All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to receive the downpayment of \$386,100 and the right to receive accrued interest and a \$244,400 principal payment payable to the Builder on or before the date hereof, and the right to reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement, including, without limitation, the Conditional Sale

Indebtedness (as defined in the Conditional Sale Agreement) and interest thereon, and in and to any other sums becoming due under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

with full recourse against the Builder (as further provided in Section 11 hereof) for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the obligations of the Builder (i) to construct and deliver the Equipment in accordance with the Conditional Sale Agreement, (ii) to comply with its warranties and agreements contained or referred to in the Conditional Sale Agreement or (iii) to otherwise perform any obligations which, according to their terms and context are intended to survive an assignment. It is understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only

against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee and the Builder with the terms and agreements on their part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder represents and warrants that it has constructed the Equipment in full accordance with the Conditional Sale Agreement, and has delivered the same to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further represents and warrants to the Assignee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement, and the Builder further agrees that it will defend the title to such



unit against the demands of all persons whomsoever; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. The Builder represents and warrants that it did not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement had been filed and recorded in accordance with Section 11303 of the Interstate Commerce Act.

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, the Conditional Sale Indebtedness or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage (including, but not limited to, reasonable counsel fees) suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder.

The Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in

or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim.

SECTION 4. The Assignee agrees that, subject to the conditions hereinafter specified, and in consideration of the execution and delivery of this Assignment by the Builder and the assignment to the Assignee of the Builder's rights under the Conditional Sale Agreement, it will pay to the Builder the sum of \$1,300,000. A first advance in the amount of \$600,000 (the "First Advance") will be paid to the Builder upon receipt by the Assignee of the following documents in form and substance satisfactory to the Assignee and its counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee security title to the units of the Equipment, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims,

liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement, and covenanting to defend the title to such units against the demands of all persons whomsoever;

(b) A certificate of acceptance with respect to the units of the Equipment delivered under the Conditional Sale Agreement;

(c) A certificate of an officer of the Vendee to the effect that the representations and warranties set forth in Article 7 of the Conditional Sale Agreement are true and correct as of the date of closing with the same effect as through such representations and warranties were made on and as of such time, and further indicating that no event of default under such Conditional Sale Agreement, or event which with notice or lapse of time or both would constitute such an event of default, has occurred and is continuing;

(d) An invoice of the Builder for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee as to its approval thereof;

(e) A certificate of an officer of the Builder representing and warranting that the downpayment of \$386,100 and the payment of all accrued interest and the principal payment of \$244,400 due and payable on January 18, 1980 have been received by the Builder;

(f) An opinion of counsel for the Vendee and the Builder, dated as of the date of closing stating that (i) the Vendee and the Builder are duly organized and validly existing corporations in good standing under the laws of the State of South Carolina and each has the corporate power and authority to own their respective properties and to carry on their respective businesses as now being conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Vendee and the Builder, and is a legal and valid instrument binding upon the Vendee and the Builder and enforceable against the Vendee and the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Vendee and the Builder, and assuming due authorization, execution and delivery by the other parties thereto, is a legal and valid instrument binding upon the Vendee and the Builder

and enforceable against the Vendee and the Builder in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges of the Builder purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment is validly vested in the Assignee and such units and such security title are free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (vi) the lien of the Conditional Sale Agreement is and constitutes a valid perfected first security interest in the Equipment (within the United States of America) and the Additional Security (as defined in the Conditional Sale Agreement), (vii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, and the terms thereof comply in all respects with the applicable provisions of the Interstate Commerce Act and the rules and regulations of the Interstate Commerce Commission thereunder, (viii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with

the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act, and upon filing of financing statements with the Secretary of State of the State of Pennsylvania, the Secretary of State of the State of South Carolina, and the County Prothonotary for the City of Philadelphia, no other filing or recordation will be necessary to provide the Assignee full security title in and to the Equipment and a valid perfected first security interest in and to the Equipment and the Additional Security, (ix) registration of the Conditional Sale Agreement or this Assignment is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended and (x) the sale of the Equipment by the Builder and the execution of the Conditional Sale Agreement and this Assignment are not subject to the competitive bidding requirements of Section 10 of the Clayton Act (15 U.S.C.A. §20); and such opinion shall also cover such other matters as may reasonably be requested by the Assignee;

In giving the opinions specified in subparagraph (f) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally.

SECTION 5. The remaining \$700,000 (the "Second Advance") will be paid by the Assignee to the Builder upon receipt by the Assignee of the documents described below in form and substance satisfactory to the Assignee and its counsel and upon satisfaction of the other conditions set forth below:

(a) The Builder shall have consummated of at least \$2,000,000 and received total funding under a \$3,000,000 loan commitment from South Carolina National Bank upon such terms and conditions as may be deemed satisfactory by the Assignee. The Assignee will be provided copies of all documents relating to the \$3,000,000 loan with South Carolina National Bank and will be permitted to review all such documents and consider the collateral provided by the Builder as security for the loan;

(b) A certificate from the Vendee dated the date of closing indicating

that all of the units of Equipment continue to be in existence and are in good order and operating condition and have not suffered a Casualty Occurrence (as defined in the Conditional Sale Agreement);

(c) A certificate of an officer of the Vendee dated the date of closing to the effect set forth in Section 4(c) of this Assignment;

(d) A certificate of an officer of the Builder dated the date of closing to the effect that the representations and warranties set forth in Section 9 of this Assignment are true and correct as of such date with the same effect as though such representations and warranties were made on and as of such date; and

(e) An opinion of counsel for the Vendee and the Builder dated the date of closing, reconfirming the matters set forth in Section 4(f) of this Assignment.

SECTION 6. Notwithstanding the provisions of Sections 4 and 5, the Assignee shall have no obligation to make any advance under this Assignment if (i) the conditions to be satisfied and the documents to be delivered prior to funding of the First Advance shall have not been satisfied



or received by the Assignee (or waived by the Assignee in its sole discretion) on or before January 22, 1980, or (ii) there shall have occurred any event of default under the Conditional Sale Agreement or event which with notice or lapse of time or both would constitute such an event of default, or (iii) there shall have occurred, in the Assignee's sole opinion, an adverse change in the financial condition or operations of the Builder or any of its subsidiaries, or any information shall come to the Assignee's attention which indicates a worsening of the Builder's and/or its subsidiaries financial condition or operations, including, without limitation, the initiation or threatening of any proceedings against the Builder or any of its subsidiaries by or on behalf of any creditor of the Builder or any such subsidiary for borrowed money (including any lessor under any lease arrangement covering railroad equipment) or the demand by any such creditor for payment in full of any indebtedness for borrowed money. In addition, the Assignee shall have no obligation to provide funding with respect to the Second Advance in the event that the \$3,000,000 loan with South Carolina National Bank is not consummated, totally funded and approved by the Assignee on or before February 1, 1980.

SECTION 7. It hereby is agreed that in the event that the Second Advance is not paid to the Builder by the Assignee, the Builder shall retain the right to receive, subject and subordinate to the rights of the Assignee, repayment of any Conditional Sale Indebtedness and interest

thereon remaining unpaid after satisfaction of all obligations due to the Assignee hereunder or secured hereby; provided, however, that it expressly is agreed that all right of the Builder in and to such Conditional Sale Indebtedness and interest thereon and all right and interest of the Builder in and to the Equipment shall be subordinate and junior to the rights of the Assignee with respect thereto and the security title and interest granted to the Assignee to secure the payments made to the Builder hereunder and to secure the obligations set forth in Section 12 hereof. Nothing contained herein shall in any way limit or negate the Assignee's prior claim to and security interest in the Conditional Sale Agreement, the Equipment, the Conditional Sale Indebtedness and all interest and other payments due thereunder, and until repayment of all amounts advanced by the Assignee and interest thereon at the rate provided in the Conditional Sale Agreement, and repayment of the obligations secured pursuant to Section 12 hereof, the Assignee shall be entitled to all payments by the Vendee in respect of the Conditional Sale Indebtedness and all proceeds from the sale, rental or other disposition of the Equipment. At the request and cost of the Builder, and upon satisfaction of all obligations owing to the Assignee hereunder and secured hereby, the Assignee shall execute such assignments or other documents as may be necessary to reconvey to the Builder, without recourse or warranty of any kind, the rights of the Assignee in and to the Conditional Sale Agreement and the Equipment.

The Builder agrees that any amounts payable to it by the Vendee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 8. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee or the Builder thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 9. The Builder hereby represents and warrants to and agrees with the Assignee, its successors and assigns:

(a) that it is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its own properties and to carry on its business as now conducted and enter into, execute and deliver this Assignment and to guaranty

the performance by the Vendee of each and all the matters and things provided for herein;

(b) that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, insofar as the Builder is concerned, the Conditional Sale Agreement is a legal, valid and existing agreement binding upon the Builder and enforceable against the Builder in accordance with its terms;

(c) that the Conditional Sale Agreement is now in full force and effect and has not been amended or modified (except as provided in this Assignment);

(d) that this Assignment was duly authorized by it and lawfully executed and delivered by it for a valuable consideration, and that assuming due authorization, execution, and delivery thereof by Assignee and the Vendee, this Assignment is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder and enforceable against the Builder in accordance with its terms;

(e) that the Assignee is vested with all the rights, titles, interests, powers and privileges of the Builder purported to be assigned

to it by this Assignment, and that security title to and security interest in the units of Equipment is validly vested in the Assignee;

(f) that there is no action, proceeding or investigation pending or threatened (or any basis therefor) against the Builder, which, either in any case or in the aggregate, will result in any material adverse change in the condition, business or prospects of the Builder or in its properties or assets, or in any material liability on the part of the Builder, or which questions the validity of this Assignment or the Conditional Sale Agreement or any action taken or to be taken in connection herewith;

(g) that the Builder is not in violation of any provision of its Charter, by-laws, the Conditional Sale Agreement and or this Assignment, and the execution, delivery and performance of this Assignment and the advance of any funds by the Assignee hereunder will not result in the violation of any such provision or the provisions of any other document to which it is a party;

(h) that the Builder is not in violation of any statute, ordinance, rule, regulation,

judgment, decree, order, license or permit applicable to it or to the activities conducted or proposed to be conducted by it, and no consent, approval or authorization by any governmental authority is required in connection with the execution, delivery and performance of this Assignment;

(i) that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(j) that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 10. The Conditional Sale Agreement hereby  
is amended as follows:

(a) Article 4 of the Conditional Sale Agreement  
is hereby amended to read in full as follows:

"Article 4. Purchase Price and Payment. The total base price (the "Total Base Price") and price per unit (including all inspection and certification fees) are specified in Exhibit A attached hereto. In consideration of the manufacturer and delivery of the Equipment, the Vendee has this date paid to the Builder a downpayment equal to \$386,100 (receipt of which the Builder hereby acknowledges) and hereby agrees to pay in cash to the Builder or the Vendor, as the case may be, at such time and place and to such person as the Builder or the Vendor may designate from time to time, the following (hereinafter called the "Purchase Price"):

a. Payments to Builder. On or before January 18, 1980, the Vendee shall pay to the Builder interest on the unpaid principal sum of \$1,544,400 (the "Conditional Sale Indebtedness") at the rate of 10-3/4% per annum (computed on a basis of a 360-day year of twelve 30-day months) accrued and owing through that date, together with the principal sum of \$244,400, thereby reducing the unpaid Conditional Sale Indebtedness to \$1,300,000; and

b. Payments to Vendor. After January 18, 1980, the unpaid Conditional Sale Indebtedness plus all accrued interest at the rate hereinafter provided shall be payable by the Vendee upon demand by the Vendor. In addition, regardless of whether such demand for payment is made, on or before the 30th day of each month the Vendee shall pay to the Vendor all accrued interest on the unpaid Conditional Sale Indebtedness at the rate hereinafter provided. Demand for payment of the unpaid Conditional Sale Indebtedness and accrued interest thereon may be made by the Vendor at any time and in its sole discretion, and nothing contained in this Agreement shall in any way be deemed to limit or restrict the right of the Vendee to make any such demand.

Interest (computed on the basis of a 360-day year of twelve 30-day months) shall be accrued and paid as above provided at a floating annual rate of interest equal to 2%, plus 110% of the prime rate of The National Bank of Maryland. For purposes of the above, the prime rate shall mean the lowest per annum corporate lending rate publicly quoted by The First National Bank of Maryland for its prime commercial borrowers from time to time on loans of 90-day maturity. All increases and decreases in the prime rate at The First National Bank of Maryland shall be reflected immediately in the interest rate charged with respect to the unpaid Conditional Sale Indebtedness.

The Vendee will charge interest, to the extent legally enforceable, at the higher of the rate of 18% per annum or the contract rate provided above upon all matters remaining unpaid after the payment shall have been due and payable pursuant to the terms hereof or such lesser amounts as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in lawful money of the United States of America as at the time of payment shall be legal tender for payment of public and private debts. The Vendee may at any time, without penalty, prepay all or any portion of the Conditional Sale Indebtedness. All prepayments shall be accompanied by accrued interest and any unpaid expenses due hereunder, and shall be applied first to the payment of such expenses, then to all accrued interest, and then to the payment of the Conditional Sale Indebtedness in inverse order of maturity."

(b) The fourth paragraph of Article 16 of the Conditional Sale Agreement is hereby amended to read in full as follows:

"The Vendee recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that this Agreement, or some or



all of the rights of the Vendor hereunder, will be assigned to The First National Bank of Maryland (the "Assignee").

(c) Clauses (f) and (g) of Article 17 of the Conditional Sale are hereby amended to read in full as follows:

"(f) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or hereunder or the Vendee shall make or suffer any unauthorized transfer of the right to possession of any unit of the Equipment; or

(g) Any event of default shall exist pursuant to any guarantee now or hereafter in effect whereby the Vendee or any other person assures or guarantees to the Vendor, or to any Assignee of the Vendor's rights hereunder, the performance by the Vendee of its obligations under this Agreement; or"

(d) The first sentence of Article 26 of the Conditional Sale Agreement is hereby amended to read as follows:

"This Agreement may be executed in any number of counterparts numbered consecutively in ascending order, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart, but only the counterpart designated "Counterpart No. 1" (which shall be delivered to the Assignee) shall be deemed to be the original which may be transferred and given to transfer the rights of the Vendor hereunder."

#### SECTION 11. Obligations of Builder as Guarantor.

The Builder, in consideration of the payment by the Assignee and for other value received, hereby unconditionally guarantees to the Assignee the due and punctual payment by the Vendee of the Conditional Sale Indebtedness, together with interest thereon, and the due and punctual performance of all

obligations of the Vendee under the Conditional Sale Agreement and unconditionally guarantees to the Assignee that all sums payable by the Vendee under the Conditional Sale Agreement will be promptly paid when due, together with interest thereon as therein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Vendee in any such obligations or payments the Builder agrees punctually to perform or pay the same, irrespective of any enforcement against the Vendee of any of the rights of the Assignee thereunder.

The Builder hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of this Assignment or the Conditional Sale Agreement or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor or any other circumstances which might otherwise limit the recourse of the Assignee against the Vendee. The Builder hereby waives diligence, presentment, demand for payment, protest, any notice of any assignment of the Conditional Sale Agreement in whole or in part or of any default thereunder and all notices with respect thereto and all demands whatsoever thereunder. No waiver by the Assignee of any of its rights under the Conditional Sale Agreement and no action by the Assignee to enforce any of its rights thereunder or

failure to take, or delay in taking, any such action shall affect the obligations of the Builder under this guarantee.

In the event that the Builder shall make any payments to the Assignee on account of its guarantee hereunder, the Builder hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Builder; provided, however, that after the complete payment and satisfaction by the Builder of all sums and obligations of the Vendee payable or owing to the Assignee under this Assignment and the Conditional Sale Agreement or any related agreement, the Builder shall, by subrogation, be entitled to the rights of the Assignee against the Vendee by reason of such payment.

SECTION 12. The Builder hereby agrees that, in addition to securing the amounts paid by the Assignee to the Builder hereunder, the assignment of all of its right, title and interest in and to the Conditional Sale Agreement and the Equipment and the payments due under the Conditional Sale Agreement is intended additionally to secure all obligations of the Builder and its subsidiaries and affiliates to the Assignee (including, without limitation, the obligations of the Builder's wholly-owned subsidiary, N. R. Financial Corporation under the Conditional Sale Agreements dated as of February 16, 1979 which have been assigned to the Assignee and the

obligations of the Builder as a guarantor thereof), and, in furtherance thereof, the Builder hereby grants to the Assignee a security interest in the Conditional Sale Agreement, the Equipment, the payments due under the Conditional Sale Agreement and the Additional Security (as defined in the Conditional Sale Agreement).

SECTION 13. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Maryland, provided, however, that the parties shall be entitled to all the rights conferred by Section 11303 of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement, any financing statement with respect thereto and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement, any financing statement with respect thereto or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 14. The Builder will pay, or reimburse the Assignee for, all reasonable costs and expenses, including but not limited to reasonable legal fees and disbursements of counsel for the Assignee incurred by the Assignee in connection with the preparation, execution and delivery of this Assignment and the instruments and documents to be delivered hereunder (whether or not the transactions contemplated hereby

shall be consummated), the subsequent assignment or sale of the Conditional Sale Agreement to another lender, the operation of this Assignment and the Conditional Sale Agreement and the enforcement, preservation and protection of the rights of the Assignee in connection with this Assignment and the Conditional Sale Agreement, and with respect to any action which may be instituted by any person against the Assignee or any of the directors, officers, employees or agents of the Assignee in respect of any of the foregoing or as a result of any transaction, action or non-action arising from or in connection with any of the foregoing.

SECTION 15. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of the date first above written, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements attached hereto.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto

affixed and duly attested, all as of the date first above written.

NATIONAL RAILWAY UTILIZATION  
CORPORATION

[Corporate Seal]

By

*Chas. P. Turaburke VP*

ATTEST:

*C. D. Vann*  
Asst. Sec.

PICKENS RAILROAD COMPANY

[Corporate Seal]

By

*Arthur E. Jones Jr. VP*

ATTEST:

*C. D. Vann*  
Asst. Sec.

THE FIRST NATIONAL BANK OF MARYLAND

[Corporate Seal]

By

*Arthur E. Jones Jr.*  
Arthur E. Jones, Jr.,  
Vice President

ATTEST:

*B. M. Neal*

State of Pennsylvania } SS:  
County of Phila. }

I HEREBY CERTIFY, that on this 18<sup>th</sup> day of January, 1980, before the subscriber, a Notary Public in and for said City and State, personally appeared *Chas. P. Turaburke*, who,

being by me duly sworn, says that he is a Vice President of National Railway Utilization Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this 18<sup>th</sup> day of January, 1980.

[Notarial Seal]

My Commission expires:

*Katherine S. Law*  
Notary Public  
KATHERINE S. LAW  
Notary Public, Philadelphia, Philadelphia Co.  
My Commission Expires June 14, 1980

*State of Pennsylvania* ) SS:  
*County of Philadelphia* )

I HEREBY CERTIFY, that on this       day of January, 1980, before the subscriber, a Notary Public in and for said City and State, personally appeared *Charles P. Gurruburke*, who, being by me duly sworn, says that he is a Vice President of Pickens Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged by the undersigned as of January 18, 1980. The undersigned hereby agrees that, beginning January 19, 1980, and until otherwise instructed in writing by The First National Bank of Maryland, all payments required by the Conditional Sale Agreement shall be paid to The First National Bank of Maryland, P. O. Box 1596, Baltimore, Maryland, 21203, Attention: Arthur E. Jones, Jr.

PICKENS RAILROAD COMPANY

[Corporate Seal]

By

*Charles P. Turaburke V.P.*

Attest:

*C. J. Jones*  
Asst. Sec.  
State of Penna. }  
County of Phila. } SS:

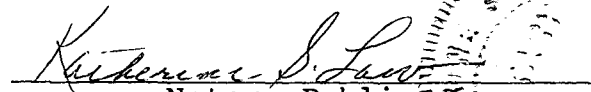
I HEREBY CERTIFY, that on this 18<sup>th</sup> day of January, 1980, before the subscriber, a Notary Public in and for said City and State, personally appeared *Charles P. Turaburke*, who, being by me duly sworn, says that he is a Vice President of Pickens Railroad Company, that one of the seals affixed to

the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this 1<sup>st</sup> day of January, 1980.

[Notarial Seal]

My Commission expires:

  
Notary Public

KATHERINE S. LAW  
Notary Public, Philadelphia, Philadelphia Co.  
My Commission Expires June 14, 1980